

**STATE OF INDIANA  
DEPARTMENT OF STATE REVENUE**

**IN REGARDS TO THE MATTER OF:**

**CONSORTIUM FOUNDATION  
DOCKET NO. 29-20010241**

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Thursday, January 10, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Consortium Foundation, was represented by Joe Salinas, Attorney at Law, 3635-B East Raymond Street, Indianapolis, Indiana 46203. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

**REASON FOR HEARING**

On September 10, 2001 the Indiana Department of Revenue issued an emergency revocation of Petitioner's Charity Gaming License. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

**SUMMARY OF FACTS**

- 1) On September 5, 2001, the Indiana Department of Revenue's Agent from the Criminal Investigation Division (CID) went to the North Michigan road location where the Petitioner conducts its gaming events.
- 2) The Department's investigation revealed that the Petitioner has consistently used workers and operators who were not "members" as required by IC 4-32-1-1 *et seq.*
- 3) On September 10, 2001 the Indiana Department of Revenue determined that an emergency existed that required the immediate termination of the Petitioner's charity gaming license.
- 4) The Department, determining that an emergency existed, revoked Petitioner's charity gaming license on September 10, 2001.

- 5) The issues under consideration are (1) whether Petitioner's conduct on or before September 10, 2001 constituted an emergency as defined by 45 IAC 18-6-3(c), and if so, (2) did it require the immediate termination of the Petitioner's charity gaming license, and (3) whether the Department exceed its statutory authority in revoking Petitioner's license to conduct charity gaming.

### **FINDINGS OF FACTS**

- 1) The Department's investigation revealed that the Petitioner has consistently used workers and operators who were not "members" as required by IC 4-32-1-1 *et seq.*
- 2) On September 10, 2001 the Indiana State Police filed a Probable Cause Affidavit in support of a Search Warrant in the Superior Court of Marion County Criminal Division Room III (Department's Exhibit D).
- 3) A Search Warrant, based upon the Probable Cause Affidavit, was issued by the Marion County Superior Court Criminal Division, Room III on September 4, 2001 (Department's Exhibit E).
- 4) The Warrant was executed on September 5, 2001, by the Marion County Sheriff's Department (Department's Exhibit E).
- 5) The Probable Cause Affidavit and Search Warrant were filed with the Marion County Clerk's Office on September 10, 2001. (See Department's Exhibits D and E).
- 6) On September 10, 2001 the Indiana Department of Revenue determined that an emergency existed that required the immediate termination of the Petitioner's charity gaming license.
- 7) The Department, determining that an emergency existed, revoked Petitioner's charity gaming license on September 10, 2001. (Record at 5).
- 8) The Department stated that its emergency revocation was based upon the Department's own investigation, in addition to the information contained in the Probable Cause Affidavit. (Record at 7).
- 9) Petitioner's charity gaming license expires on March 31, 2002.

### **STATEMENT OF LAW**

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) IC 4-32-9-4 states, "Each organization applying for a bingo license...must submit to the department a written application...The application must include the following: (7) The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator. (8) A sworn statement signed by the presiding officer and secretary of the organization attesting to the eligibility of the organization for a license..."

- 3) IC 4-32-9-26 provides, “An individual may not be an operator for more than one (1) qualified organization during a calendar month...”
- 4) IC 4-32-9-27 states, “An operator or a worker may not directly or indirectly participate, other than in a capacity as operator or worker, in an allowable event...”
- 5) IC 4-32-9-28 states, “An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event.”
- 6) According to IC 4-32-9-29, “A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event.”
- 7) IC 4-32-12-3 states, “In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following: (1) Suspend or revoke the license...”
- 8) 45 IAC 18-6-3 (b) provides, “The department may determine at any time that an emergency exists that requires the immediate termination of a license. Effective with the receipt of the department’s decision to terminate its license, a licensee must cease all operations that were previously authorized under the license.
- 9) An emergency requiring the immediate termination of a license will be deemed to exist under any of the circumstances found in 45 IAC 18-6-3(c).
- 10) 45 IAC 18-6-3(c) provides, “An emergency requiring the immediate termination of a license will be deemed to exist under any of the following circumstances:
  - (1) The information provided on the application for license is found to be false or misleading.  
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  - (11) An operator or worker does not meet the requirements of IC 4-32.  
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  - (13) An other violation of IC 4-32 or this article considered to be of a serious nature by the department.”

### **CONCLUSIONS OF LAW**

- 1) The Department’s determined that Petitioner had consistently used workers and operators who were not “members” as is defined by Indiana law.
- 2) The Department’s findings are prima facie evidence that the Department’s claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made.
- 3) The Petitioner’s representative stated, “...I frankly don’t see how the Department could have acted in any other way...I would have done it too...”. (Record at 11 and 22 respectively).
- 4) An emergency requiring the immediate termination of a license will be deemed to exist under any of the circumstances found in 45 IAC 18-6-3(c).
- 5) The Department having determined that Petitioner violated several provision of 45 IAC 18-6-3 an emergency requiring the immediate termination of Petitioner’s charity gaming license existed.

- 6) The Department following the mandate set forth in 45 IAC 18-6-3 revoked Petitioner's charity gaming license pursuant to Indiana Law.

**DEPARTMENTAL ORDER**

Following due consideration of the entire record, the Administrative Law Judge holds the following:

Petitioner's appeal is denied. The actions taken by the Indiana Department of Revenue on September 10, 2001 are hereby upheld.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

**THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.**

Dated: \_\_\_\_\_

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Bruce R. Kolb / Administrative Law Judge